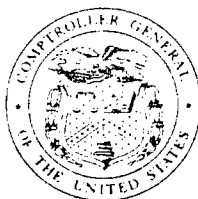


18006

Hordell

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of Forest Service Contract Award]

FILE: B-201032

DATE: May 6, 1981

MATTER OF: Westvold & Associates

DIGEST:

1. Award based on initial proposals is proper where there was adequate competition, several offerors submitting independent cost and technical proposals, and award was at fair and reasonable price.
2. Burden is on each offeror to make sure proposal arrives at designated address in timely manner and intact.
3. GAO does not conduct investigations for purpose of establishing validity of protester's unsubstantiated statements.
4. Mere allegation of favoritism, fraud and/or discrimination, without independent evidence in record constitutes speculation and does not satisfy protester's burden of affirmatively proving its case.

Westvold & Associates (Westvold) protests the award of a contract to AA Surveying Service, Inc. (AA), by the Department of Agriculture, Forest Service (Forest Service), pursuant to request for proposals (RFP) No. R6-80-441N for a preliminary road survey of Squaw Flats Road No. 11.

Westvold advises that it submitted a complete proposal on September 8, 1980, in the amount of \$8,058. After becoming aware of the contract award in the amount of \$12,213.34, Westvold states that it requested a copy of its proposal and the evaluation scores from the Forest Service. A copy of the requested information was supplied to Westvold; however, Westvold contends that it did not receive a copy of the total proposal as it was initially submitted by Westvold. Westvold questions what occurred after it submitted its proposal to the

046774

115131

Forest Service and why the partial proposal was evaluated and considered. Westvold believes that there are irregularities (favoritism, fraud and/or discrimination) in the contracting office of the Forest Service's Region 6 and requests an investigation of the contracting procedures. Furthermore, Westvold alleges that the Forest Service, in an effort to obligate funds prior to the end of the fiscal year, did not, as Westvold understands is normal procedure, discuss questions which arose concerning the proposals with the low offerors prior to award.

The Forest Service states that the RFP Standard Form 33-A, clause 10, gave notice of the possibility of award based on initial proposals and that award, without discussions, to AA was proper since AA's proposal, when compared to Westvold's proposal, was technically superior and the amount was reasonable. We note that the Forest Service in rejecting Westvold's proposal did not question the firm's technical capability as Westvold apparently thinks; rather, the proposal as submitted was considered technically unacceptable. Further, as to Westvold's contention that it must have submitted a complete proposal, otherwise its proposal would not have been evaluated, the Forest Service states that the "Federal Procurement Regulations require that the Board of Contract Awards evaluate and rate all proposals received." The record indicates that five proposals were received and evaluated, including another proposal, like Westvold's, which was incomplete. With respect to the allegations that the Forest Service did not follow normal procedures and the award was made for the sole purpose of expending fiscal year 1980 funds, the Forest Service denies the allegations and advises that this procurement was planned and budgeted early in the fiscal year and only because of a heavy workload was the project not started sooner.

The authority to award on initial proposals is found in the Federal Procurement Regulations (FPR) § 1-3.805-1(a)(5) (1964 ed. amend. 153), which provides:

"After receipt of initial proposals, * * * discussions shall be [held] * * * except [in] * * *:

* * * * *

"(5) Procurements in which it can be clearly demonstrated from the existence of adequate competition * * * that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price: Provided, that the request for proposals contains a notice * * * that award may be made without discussion * * *"

[Adequate competition, to support an agency's determination to award a contract without discussions, exists when several offerors submit independent cost and technical proposals, as was the case here, and the offeror with the most favorable initial proposal, price and other factors considered, is selected for award at a fair and reasonable price.] See Shappell Government Housing, Inc. and Goldrich and Kest, Inc., 55 Comp. Gen. 839 (1976), 76-1 CPD 161.

Determining that an award based on initial proposals will result in a fair and reasonable price requires an independent cost projection of the proposal cost. See Development Associates, Inc., 56 Comp. Gen. 580 (1977), 77-1 CPD 310. Here, the record contains the Forest Service's estimate (\$18,272), presumably based on its cost projections for this procurement and experience with similar procurements. [Award to AA was approximately \$6,000 less than the Government estimate.] In this circumstance, [we conclude that award was made at a fair and reasonable price.]

Accordingly, [the Forest Service's award to AA based on initial proposals was proper. This renders Westvold's allegation that the Forest Service's procedures were not followed due to the ending of fiscal year, which the Forest Service denies, academic.]

Concerning the issue of the completeness of Westvold's proposal, [the burden is on each offeror to make sure its proposal arrives at the designated address in a timely manner and intact. There is nothing in the record except Westvold's statement that

it submitted a complete proposal. Moreover, Westvold did not submit to our Office a copy of the proposal it submitted to the Forest Service; rather, it was a compilation "from scratch notes and forms used to prepare the original proposal." [This basis of protest is denied.]

Concerning Westvold's allegations of irregularities and its request for an investigation, [it is not the practice of our Office to conduct investigations for the purpose of establishing the validity of a protester's unsubstantiated statements. Instead, it is the responsibility of the protester to present evidence sufficient to affirmatively establish its allegations.] Robinson Industries, Inc., B-194157, January 8, 1980, 80-1 CPD 20. [Absent independent evidence of favoritism, fraud and/or discrimination, these charges amount to mere speculation and, as such, fall short of satisfying the protester's burden of affirmatively proving its case as to this issue.] A.R.&S. Enterprises, Inc., B-197303, July 8, 1980, 80-2 CPD 17; Dictaphone Corporation, B-194128, June 19, 1979, 79-1 CPD 439.

[Westvold's protest is denied.]

Milton J. Fowler

Acting Comptroller General
of the United States